

NOTICES OF RULEMAKING DOCKET OPENING

The Administrative Procedure Act (APA) requires the publication of Notices of Rulemaking Docket Opening when an agency opens a rulemaking docket to consider rulemaking. Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process.

NOTICE OF RULEMAKING DOCKET OPENING STATE BOARD OF DENTAL EXAMINERS

[R08-403]

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| <p>1. <u>Title and it's heading:</u></p> <p><u>Chapter and it's heading:</u></p> <p><u>Articles and their headings:</u></p> <p><u>Section numbers:</u></p> | <p>4, Professions and Occupations</p> <p>11, State Board of Dental Examiners</p> <p>1, Definitions; 13, General Anesthesia and Sedation</p> <p>R4-11-101, R4-11-1301, R4-11-1302, R4-11-1303, R4-11-1304, R4-11-1305, R4-11-1306 (As part of this rulemaking, the Board may add, delete, or modify additional Sections as necessary.)</p> |
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2. Subject matter of the proposed rule:

After many months of review by a Board subcommittee, the Board is proposing needed changes to the rules in Article 13 (General Anesthesia and Sedation). Because the definitions in dental anesthesia and sedation nation wide are headed away from route of administration to level of sedation, the rulemaking makes definition changes R4-11-101 (Definitions) that are consistent with the American Dental Association, American Academy of Pediatric Dentistry, and American Association of Oral and Maxillofacial Surgeons guidelines. Other definitions are removed because the definition no longer has a reference in the balance of the rules. Still others are revised for consistency.

The Section 1303 (Oral Conscious Sedation) rule was approved in 2003. It was found that the oral examination over medical emergencies was inadvertently left out of the new Section. To be consistent with the requirements in Section 1301 (General Anesthesia and Semi-conscious Sedation) and Section 1302 (Conscious Sedation), the proposed rules adds a subsection to Section 1303 Oral Conscious Sedation addressing the oral examination over medical emergencies issue. The existing Section 1303 rule also allows a dentist to administer one dose of an anxiolytic and administer nitrous oxide without obtaining a Section 1303 permit. After the rule went into effect, it was soon evident that this portion of the rule was confusing. The proposed rules clarify under what conditions a dentist may administer and anxiolytic and nitrous oxide without first obtaining a Section 1303 permit.

Section 1301, 1302, and 1303 permits require an onsite evaluation. A problem arises when an applicant does not pass the onsite evaluation. There is nothing in Article 13 that addresses what to do when an applicant fails. Is the application considered incomplete and closed? The evaluators may suggest a remedy such as re-evaluation with further education, but many of the evaluation team's remedy suggestions are inconsistent. If further education is suggested, there is no means in existing rules to enforce completion of the education. If the application is closed, there is no means in existing rules to make sure that further education has been completed before the dentist re-applies. The proposed rules address this issue within each permit by giving specific circumstances and required remedy.

There are Arizona licensed dentists who are dental anesthesiologists. These dentists hold Section 1301 General Anesthesia Permits. They do not have their own offices and do not perform the dental work while administering anesthesia. They travel to other licensed dental offices taking the required equipment with them. R4-11-406 (Fee for Anesthesia and Sedation Permits) requires a fee for each practice location. These dental anesthesiologists travel to many dental offices, and they may not administer anesthesia more than once in a practice location. Logistically it is impossible for them to turn in a permit for a location where they administered anesthesia yesterday in exchange for a permit they may need tomorrow at a different dental office. The proposed rules clearly delineate the qualifications for a mobile permit in Sections 1301, 1302, and 1303.

Onsite evaluators have noted that in some practices partially used IV fluid bags were being reused on other patients. In consideration of Center for Disease Control guidelines, the proposed rules require a new infusion line and new bag of fluid for intravenous access for each patient.

Two patient safety issues are addressed in the proposed rules. The first is the utilization of supplemental continuous flow oxygen. The proposed rules require the use of supplemental continuous flow oxygen for all patients for all permits. The second is patient monitoring. The proposed rules require monitoring of a patient from the initiation of anesthesia until the patient is stable at all permit levels.

There is a trend in dentistry toward offering sedation dentistry in a dentist's practice. The existing avenue for a dentist to employ or work with a physician anesthesiologist is via a Section 1301 General Anesthesia and Semi-conscious Sedation permit. The dentist must meet all requirements of the permit including equipment, emergency drugs, advanced cardiac life support, DEA certification, and proper recordkeeping. The dentist does not need to be educationally qualified to obtain the permit, but if not educationally qualified, the dentist must employ or work with a licensed allopathic or osteopathic physician anesthesiologist. After successfully completing the onsite evaluation, the dentist is issued a Section 1301 permit. This is where the existing Section 1301 permit rules becomes a problem. By

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having the permit, the non-educationally qualified dentist is allowed to do anything an educationally qualified permit holder can do including administering conscious sedation without obtaining a Section 1302 permit. Also, with the existing 1301 permit, it is difficult to track whether a dentist employs a physician anesthesiologist or personally administers anesthesia. The proposed rules will correct this situation by extracting those non-educationally qualified dentists who employ or work with an allopathic or osteopathic physician anesthesiologist out of Section 1301 and creating a new Section 1304 permit. The existing 1301 Permit will remain for those educationally qualified dentists who administer the anesthesia. The new Section 1304 permit will be for those non-educationally qualified dentists who employ or work with an allopathic or osteopathic physician anesthesiologist.

The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The agency docket number, if applicable:

R0801

3. A citation to all published notices relating to the proceeding:

None

4. Name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Pamela J. Paschal, Deputy Director

Address: State Board of Dental Examiners
5060 N. 19th Ave., Suite 406
Phoenix, AZ 85015-3214

Telephone: (602) 242-1492

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5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Board will accept written comments Monday through Friday, 8:00 a.m. to 5:00 p.m. Oral comments may be made at the Board office:

Time: Monday through Friday, 8:00 a.m. to 4:30 p.m.

Location: State Board of Dental Examiners
5060 N. 19th Ave., Suite 406
Phoenix, AZ 85015-3214

Written and oral comments will be accepted until the close of record on a date and time as yet undetermined.

6. A timetable for agency decisions or other action in the proceeding:

None